

**TOWN OF WESTFORD**  
**ZONING BOARD OF APPEALS**  
**MINUTES**

**DATE:** May 28, 2003

**TIME:** 7:30 P.M.

**PLACE:** Westford Academy Lecture Hall

**PRESENT:** Sam Frank, Ron Johnson, Dave Earl, Jay Enis, Bob Herrmann,  
Jim Kazeniac, Roger Hall

**OTHERS**

**PRESENT:** Jennifer Burke, Permitting Office Manager; Ellen Doucette,  
Town Counsel; Norman Khumalo, Assistant Town Manager/  
Land Use Planner; Audience Members

**99 MAIN STREET, ROSEGATE AT WESTFORD – COMPREHENSIVE  
PERMIT**

***Read Architectural Review into the Record and Discussion with  
Winslow Architects of Cambridge; Question and Comments from the  
Board***

A report was received in mid-April dealing with built context, environmental context, site plan and building designs. A copy of the report is available at Town Hall. John Winslow, Winslow Architects of Cambridge, outlined the four conclusions and recommendations of the report as follows: the Applicant consider alternative approaches to the massing of the proposed building; the Applicant relocate the parking lot in the front of the building; consideration of locating the building parallel to Main Street rather than at an angle as currently proposed; and closer study of the rear façade of the building. Winslow suggested that the Board ask the applicant for a history of the concepts the applicant went through to arrive at the current plan. Winslow and the Board discussed massing of the buildings, parking and open space.

## ***Public Safety Comments from Fire Department and Police Department; and Questions and Comments from the Board re: Public Safety***

Frank read into the record a letter from Robert Welch, Westford Police Chief, dated May 23, 2003 regarding his review of the plans dated May 6, 2003. Welch wrote that the access around the building is questionable especially for medical response involving police vehicles and fire apparatus. Welch also wrote that the driveway on the eastern side of the proposed building should be widened to accommodate responding vehicles possibly to 24 ft. rather than 20 ft. and the driveway should be continued around the building possibly resulting in the elimination of units 1 and 2. Welch recommended a proper fire lane be established around the building as it is a multi-unit project creating high density in a small area and access is critical in case of fire or other hazardous conditions that may require public safety response. Welch felt that the site distance for the driveway appeared to be sufficient for entering or exiting vehicles and there appeared to be a sufficient number of spaces for parking under normal everyday conditions. Welch suggested a sidewalk be provided for pedestrian traffic up to the intersection of Main and Depot Streets connecting with the existing sidewalk.

Frank read into the record a letter from Donald Parsons, Fire Prevention Officer, dated May 23, 2003 regarding his review of the plans dated May 6, 2003. Parsons questioned the fire apparatus access and recommended that fire apparatus have access around the entire building. Parsons wrote that alternative access road development would be subject for review to ensure that the access road could support the weight, width and height of the fire apparatus as well as supporting fire fighting operations.

## ***Applicant's Response***

Attorney Douglas Deschenes was present representing the applicant. Deschenes commented on the Architectural Review. Deschenes offered to provide written analysis relative to the design of the project to Winslow and the Board. Deschenes stated that from a design perspective the site has significant limitations and in designing the site the applicant tried to balance issues of architectural, public safety, Conservation, Planning Board, and all the different aspects of a project. Deschenes pointed out that the wetland resource areas are driving the location and the general design of the building, parking and the septic location. Deschenes stated that the applicant also looked at a garden-style apartment building but felt that the townhouse design would make for a better project. Deschenes stated that the site is very limited as to where an "L" shaped building or two buildings could be located and still try and meet the setback requirements. Deschenes stated that the location of the entranceway was deemed to be the safest and best choice. Deschenes indicated that there was a great deal of work put into the design of the project in an attempt to balance, to have a good internal flow of traffic, and to address density issues.

Deschenes was of the opinion that the building overall, in balancing the many different issues, is actually the best design.

Earl asked Deschenes to respond to the suggestion of reducing the development to ten or eleven units. Deschenes agreed that reducing two units would provide some additional room to move around. Deschenes stated that perhaps they made a tactical error in proposing the project at the number they needed it to be and feel is correct. Deschenes

stated that the applicant prefers to design, price and propose the project at what he believes to be an economically reasonable and feasible position. Deschenes stated that they are not in a position to be reducing units at this point. Earl stated that he was not prepared for the applicant to take the suggestion of reducing units totally off the table when talking about architecture and site plan. Earl wanted the developer to work with the Town in good faith to come up with a development that is good for both the developer and the Town. Herrmann told Deschenes not to accept that it is a forgone conclusion that the Zoning Board is going to give the applicant twelve units.

Earl referenced data provided by staff regarding the number of children at the other two 40B projects in Westford. Given that data, Earl anticipated at least one child per unit for this project. Khumalo stated that the data provided was based on the number of children picked up by school buses close to the developments and that some of the children could be from other residential units in the vicinity. Earl recommended that the element of a common play space needed to be addressed. Deschenes stated that the Department of Housing and Community Development (DHCD), the Division of Community Services, had conducted a thorough examination of housing and school-age children throughout Massachusetts during the period of 1980-1987 which is the most up-to-date study of its type done by DHCD. Deschenes stated that the report talks about the number of school-age children expected to be generated by particular types of housing. Deschenes summarized the report and submitted it to the Board. Deschenes anticipated that the proposed project would generate two school-age children for the 12 units based upon the comprehensive report done by the State and the data collected. Deschenes stated that there has been a great deal of interest in the project from people aged 55 and over looking to downsize. Frank read into the record a memo from the Permitting Office Manager and the Assistant Town Manager, dated May 28, 2003, regarding the number of children from Stone View Estates and Hay Stack Estates.

Deschenes questioned the recent letters from the Police Chief and the Fire Prevention Officer. Deschenes stated that in February there was an initial review by the Police and Fire Departments. At that point the Police and Fire had no problems with the access or the fire safety. Deschenes stated that Parsons had suggested that a fire lane be added to the back (garage locations) to be kept open so that the trucks could get all the way around. Deschenes pointed out that the plan has not changed relative to the building layout, parking, access and garage layout yet the opinion of public safety regarding fire access has changed. Deschenes asked for insight as to the basis of the requirement that vehicular access be provided completely around the building. Deschenes noted that other much larger buildings in Westford do not have full vehicular access. Khumalo stated that Parsons indicated to him that this is not the first time he has requested this type of access. Deschenes stated that their engineers would review the suggestion of increasing the driveway width from 20 ft. to 24 ft.

Frank reported that there was a working session held on May 16, 2003 to address civil engineering which resulted in the resolution to many of the civil engineering questions. Frank stated that the Board still does not have the first comprehensive review of the stormwater, septic and other water factors on the site. Frank requested that information in time for the next working session. Deschenes stated that the plans have been revised based upon preliminary review and comments provided by the Town and the Town's consultant. Deschenes hoped to have a final review from Howe Surveying to the Board indicating that the development has met and/or addressed all of their concerns.

### ***Audience Comments re: Rosegate Development***

Beverly Sherman, 104 Main Street, asked if this building would be legal on the site if it was not Chapter 40B. Frank stated that the building would not be legal. Frank stated that Chapter 40B puts all the town regulations at risk.

Sandy Martinez, 95 Main Street, was concerned with the snow removal being placed on her side of the lot in her septic location. The Conservation Commission brought up at a meeting the lack of snow removal area. Martinez wanted to know when the widening of the driveway would be discussed as it will come closer to her property. Frank stated that the driveway widening has not yet been addressed but would be discussed at a future working session. Martinez also asked when the issue of the gas tanks would be addressed. Frank asked Martinez to provide information to the Board regarding the location of the gas tank. Frank stated that the Board will try to resolve many of the issues but some of the issues will get down to the final bargaining. Dennis Galvin, Concord Road, stated that the State Fire Marshall's Office keeps records of all underground storage tanks.

Dennis Keris, 100 Main Street, questioned the amount of acreage associated with the site. Keris noted that if the wetlands and buffers are eliminated from the property there is approximately .4 off of this property and then there are variances to all of the buffer zones to the wetlands. Keris stated that this is a huge project on a piece of property that will not be able to handle it. Keris asked that the neighborhood be considered when compromises are made. Keris suggested taking aerial photographs of the area and then imagine what it is going to look like when they are done which would give everybody a different image. Keris felt that it was in the best interest of all parties to do what is best for everyone involved. Frank stated that the Board has absolute authority not to compromise on serious public safety and public health issues and if the Board feels convinced of that one of the Board members will make a motion to deny the project.

Ken Morgan, 4 Dutchman Lane, addressed the issue of the public safety aspects and emergency access roads encircling a building which he was familiar with due to his participation on the Permanent School Building Committee (PSBC). Morgan stated that in each of the PSBC projects 360 degree access had to be provided around the facilities. Morgan asked the Board to hold this project to the same standards as the PSBC from a public safety standpoint.

### **MOTION TO CONTINUE THE PUBLIC HEARING**

It was moved by Herrmann, seconded by Johnson, and VOTED UNANIMOUSLY, to continue the public hearing to June 25, 2003.

### **137 CONCORD ROAD – CONCORD PLACE – COMPREHENSIVE PERMIT**

It was moved by Johnson, seconded by Herrmann, and VOTED UNANIMOUSLY, to open the public hearing.

Johnson read into the record a statement of fact relating to a possible conflict of interest involving his son's work as a self-employed historical engineer. This statement was at

the recommendation of Town Counsel after discussions with the State Ethics Commission both of which felt that Johnson did not have a conflict of interest.

Frank reported that he, Johnson, Dennis Galvin and Patricia Wagner-Montminy met in Littleton, Massachusetts on Friday, May 23, 2003 to discuss the 40B process. The merits of the current proposal were not discussed. Frank enlisted the assistance of Galvin and Wagner-Montminy in keeping future meetings orderly. Doucette reported that she resolved an issue with an attorney representing Wagner-Montminy.

### ***Initial Presentation by Applicant***

Attorney Douglas Deschenes, representing Concord Place Development LLC, was present. Deschenes introduced Dennis Page and David Trahan, the members and managers of Concord Place Development LLC. Deschenes outlined the five criteria for a project under the Mass Housing Starts Program. A site eligibility letter has been received from Mass Housing dated February 19, 2003. Under the Mass Housing Starts program, an affordable housing project is held to a minimum that 25% of the units must be affordable. Deschenes clarified affordable as being someone making 80% of the median income for this regional area. The current median income is \$75,200 based on recent studies conducted by DHCD. Accordingly, 25% of the proposed units must be made affordable to people making less than \$60,160. The units must be made affordable for at least thirty (30) years. Deschenes stated that the applicant is willing to provide that the units stay affordable in perpetuity. Deschenes predicted the affordable units would sell for approximately \$150,000 - \$170,000. Deschenes outlined the requirements for a Limited Dividend Company which agrees to limit its profits to no more than 20% of the gross costs. Any funds received beyond that must be returned back to the Town for use in developing other affordable housing. The developer must enter into a monitoring agreement with a third party independent auditor who will oversee the numbers and will audit the project books at the end of the project.

Deschenes made a presentation for a twelve (12) unit townhouse-style condominium development at 137 Concord Road of three (3) buildings of four (4) units each. Deschenes stated that the site is 41,118 sq. ft. (.94 acres) with the entire site outside of the 100 ft. buffer zone for the wetlands to the rear. There is no work proposed within the buffer and there will be no filing with the Conservation Commission. There is a 1½ story single-family home, a garage and a secondary shed currently on the property. Deschenes stated that the original proposal had sixteen (16) units on 1.21 acres of land which they understood to be the size of the site until title research was completed. The title research indicated a taking of the corner of the lot for Concord Road. Deschenes stated that each proposed townhouse will be 1,400 sq. ft. in size with two bedrooms and two bathrooms. Each unit will be allotted two parking spaces (one of which is a garage space). There will be six (6) visitor parking spaces. All of the units will comply with the State Building Code as well as the State Environmental Regulations. The site is served by town water and will be served by a private subsurface sewerage disposal system. Deschenes showed a drawing of a typical four unit building in the colonial design. Deschenes estimated the building coverage to be under 20%, the paved area at 30%, and in excess of 50% of the site to be open space. Deschenes showed a preliminary drawing of the engineer's view of landscaping. Deschenes proposed extensive landscaping to the site and a vegetated buffer along Concord Road. All access to the site will be from Elliot Road with no direct outlets onto Concord Road. Deschenes outlined the requested

waivers. Deschenes stated that he is currently drafting a revised waiver list based on the reduction of the units.

### ***Questions and Comments from the Board***

Doucette reported on a conversation she had with Mass Housing regarding the discrepancy in the lot size and the potential historical nature of the building. Mass Housing indicated that those issues would not affect their approval of this project even if it remained at sixteen units. A letter from Mass Housing will be forthcoming for the Board's record. Deschenes pointed out that pursuant to verification by the Historical Commission the building is not eligible for listing on the National Register of Historic buildings.

Frank read into the record a memo dated April 9, 2003 from the Westford Water Department; a memo dated April 9, 2003 from Bill Turner, Conservation Administrator; a memo dated April 15, 2003 from Donald Parsons, Fire Department; and a memo dated May 6, 2003 from the Interim Town Engineer.

Herrmann questioned whether or not Chapter 40B projects were a new way to get around the building permit cap in Westford. Herrmann also questioned whether this project would be setting precedent by tearing down an older home and building affordable housing. Herrmann expressed concerns with the density of this project.

Johnson asked Deschenes to provide the Board with a plot plan showing the building envelope that would be allowed under a regular RA showing the 50 ft. setbacks from both roads and the 15 ft. setback to get a better sense of the dimensional variances being requested.

Khumalo was concerned with the amount of pavement being proposed in a residential setting. Khumalo asked the applicants to consider a concept more sensitive to the proximity of the units to the property line particularly in regard to the land facing the northeast portion. Khumalo suggested moving one of the buildings closer to Elliot Street and away from the northeastern property line which would help reduce the visual intrusion in regard to the abutting neighbor. Khumalo stated that he was interested in seeing the detailed landscape plan.

Herrmann asked the applicant to provide information regarding other alternative plans that were reviewed prior to the submitted plan.

Deschenes outlined the plans for the infiltration system with an overflow pipe and rip rap to be placed on the easement. Deschenes stated that the storm-water management control will meet DEP guidelines.

### ***Questions and Comments from the Public***

Attorney John Paczkowski, representing Patricia Wagner-Montminy, stated their objections to the plans as it is presently constituted. Paczkowski stated that the sewerage disposal system as shown on the plan is within 100 ft. of his client's drinking water well which is in violation of Title 5 and the Westford Board of Health regulations. Paczkowski stated that he spoke to Attorney Deschenes regarding this issue.

Alan Hicks, 130 Concord Road, stated that he works as an air pollution control engineer for the Environmental Protection Agency but anything he states will be his own opinion and has no reflection on the EPA. Hicks stated that he supports affordable housing. Hicks was concerned with six of the requested waivers. Hicks felt that waivers may be appropriate for much smaller projects or pre-existing situations. Hicks was concerned that 12 units are being proposed on a plot of land currently occupied by a single home. Hicks was also concerned with the applicant requesting a waiver from the requirement that a system have a capacity of 150 gallons per day. Hicks stated that the 110 gallon capacity proposed meets Title 5 requirements but does not meet town requirements. Hicks believed that the loft space could be converted into a bedroom without the town's knowledge and could effectively make this a 36 bedroom project. Hicks stated that without a reserve leaching field area the owners of the condominium in the future will only have very limited and very expensive options if the primary leaching field fails. Hicks felt it would be a disservice to people living in the development if it is affordable now and turns out to be un-affordable later because they have to pay a tremendous amount of money to repair a failed septic system. Hicks stated that both the primary and proposed secondary leaching fields are located under pavement. Hicks stated that Title 5 warns against this because of settling, damage from vehicular traffic, the necessity to provide a system of vent pipes, and the difficulty of access if repair is required. Hicks stated that the plans do not indicate the capacity or location of the septic tank or tanks. Hicks stated that a surface disposal system component should only be located under pavement if there is no other feasible option. Hicks stated that in this case the most feasible option is to not build a large complex. Hicks questioned the waiver for the minimum 50 ft. distance between septic system and subsurface stormwater infiltration system which is intended to prevent incompletely treated sewerage from mixing with drainage at times of heavy rainfall and to prevent sewerage from draining into the natural and artificial drainage areas. Hicks stated that Title 5 requires minimums ranging from 100 to 50 feet depending on whether the groundwater is seasonal or not. Hicks stated that the town requirements makes the assumption that any high groundwater, seasonal or not, is likely to cause contamination from large systems. Hicks stated that he could not imagine why the applicant would want to waive the hydrological study. Hicks believed that the hydrological study was required under Title 5 and should not be waived. Hicks felt that an assessment of groundwater flow was necessary for the proper location and design of a sewerage disposal system. Hicks also believed that the evaluation of topographical and subsurface features and structures was required under Title 5 and should not be waived. Hicks stated that it was important that an evaluation of how sewage disposal systems and surface run-off will affect the adjacent properties including the wetlands adjacent to the property. Hicks was opposed to waiving the requirement for mounding calculations. Hicks was concerned that the applicant is also requesting a waiver from site plan review. Hicks stated that in his experience as an environmental inspector if someone tells him not to bother looking at something that is where he mostly finds fault.

Ken Morgan, 4 Dutchman Lane, was in favor of increasing affordable housing. Morgan asked for the curve number of units of affordable housing in Westford. Frank stated that the number of affordable units was under 2%. Morgan asked that the location of the neighbors and the drinking wells be shown on a site plan. Morgan stated that some of his neighbors have already experienced drainage problems during periods of heavy rain. Morgan was concerned with impacts to his and his neighbors' properties during construction. Morgan was concerned with the maintenance of the infiltration system and how anyone will know if it is failing. Morgan requested information regarding the

elevations of the units and whether the garages could be located under the units. Morgan was also concerned with the landscaping.

Dennis Galvin, 90 Concord Road, was concerned with density. Galvin reminded the Board of a prior presentation for 12 units on 1.8 acres and this is a planned construction project of 12 units on .97 acres which means it is about half the size. Galvin felt that all of the Board's dimensional issues with the previous proposal are going to be exacerbated two fold with this situation. Galvin stated that there are three building on this site and Attorney Deschenes argued against splitting the buildings in the 99 Main Street project which had more land. Galvin stated that there are 3 separate buildings on half the land. Galvin stated that Elliot Road is very narrow. Galvin asked if there were plans to expand that access road. Galvin stated that if there is a fire the aerial fire truck will have a significant problem trying to get access into those buildings. Galvin was also concerned with setting a precedent by tearing down an existing building and a redefinition of the area. Galvin stated that the neighbors on Concord Road are concerned with setting a precedent and the affect on all the property values as well as changing the complexion of the entire neighborhood.

Marjorie Hicks, 130 Concord Road, asked if the State Historical Commission or the Westford Historical Commission deemed the building to be not historical. Deschenes summarized a letter from the Westford Historical Commission dated May 28, 2003 to the Zoning Board of Appeals. The letter indicated that the demolition of the building was outside of the scope of the Westford Historical Commission's purview. The letter also indicated that the Mass Historical Commission has stated that 137 Concord Road is not eligible for listing on the National Register of Historic Places. Hicks stated that she has been attending Westford Historical Commission meetings and that they are very much in favor of keeping the building even though it is only a 1929 building. Hicks read the submission from the Westford Historical Commission to the State Historical Commission. Hicks submitted photographs of the site and the surrounding neighborhoods and pointed out various historic areas. Hicks stated that she would like to keep the 1929 house and put a few units of affordable housing behind it. Frank asked Hicks to provide the letter from the Westford Historical Commission to the Board. Frank stated that the Board would follow-up with the Westford Historical Commission.

Patricia Wagner-Montminy, 135 Concord Road, asked what type of septic system the applicant intended to put in and the number of tanks. Deschenes stated that the system is a subsurface sewerage disposal system similar to most systems in Westford. The system will meet Title 5 requirements. Deschenes stated that a detailed design of the system will be submitted to the Board of Health and will provide the Zoning Board with a detailed design of the system. Deschenes believed that the system had a single septic tank.

Frank asked the applicant to submit reduced plans in the future. Deschenes agreed.

Wade Fox, 35 Hartford Road, asked what the waiver from the Growth Management Bylaw meant. Frank stated that the waiver would be from the Growth Management Bylaw completely so that the applicant could build the project at the rate that suited their purposes. Fox was concerned with waiving from the Growth Management Bylaw and that granting the waiver would set a bad precedent.

Bill Coakley, 19 Phillips Drive, stated that he has been an advocate for affordable housing for a number of years. Coakley stated that he serves as a board member of the Westford



Housing Authority as well as a Housing Representative to the Community Preservation Act Committee. Coakley stated that he was not representing any boards or committees at this time. Coakley stated that there are good and bad affordable housing proposals. It was Coakley's opinion that this was a bad proposal with the chief reason being the density issue. Coakley stated that when a project has many units on a small amount of land there are a multitude of problems the chief among them being septic system failure. Coakley stated that there was a multi-unit project built at 10 Groton Road (5 buildings with 6 units each on 5 acres of land). This project resulted in a massive septic system failure. Coakley felt that people living in these units do not have the financial resources to address the problem and then it becomes a town problem. Coakley felt that this project would likely become a public health problem. Coakley pointed out that the Housing Authority is proposing a 15 unit rental affordable housing proposal at Stony Brook on 7½ acres and tied into the new middle school waste water treatment plant. Coakley stated that it is easy to overload a septic system in these types of proposals. Coakley felt that the only way to avoid that problem was to have a careful review by the Board of Health and look to reducing the number of units.

Mary Miller, 89 Concord Road, recommended that soil testing be done.

Laura Plum, 3 Lanes End, stated that she participated in a Planning Board meeting where traffic and safety issues were raised. Khumalo stated that those issues were forwarded to the Zoning Board by the Planning Board.

A resident asked that the same standards be applied to this project as to the Rosegate project relative to the full access for the safety vehicles. The resident was also concerned with having a play area for children, road traffic management and adequate access for emergency vehicles.

Gordon Stevenson, 130 Concord Road, stated that he has not seen any comments or letters from the Planning Board relative to this project. Khumalo stated that the Town Planner put together a comment letter to the Zoning Board. Stevenson felt that there was a discrepancy in the application to Mass Housing because the applicant indicated that the buildings would be 2½ stories high and are now seeking a waiver for 3-story buildings. Frank stated that the applicant will be updating the waiver list and that the Zoning Board will allow the applicant to submit new waiver requests any time they think they are in need of one. Stevenson asked for clarification regarding abutter notification because he was not notified of this project. Deschenes stated that the Assessor's Office prepares a certified list of the abutters and the Permitting Office sends out the notices. Helen Stevenson stated that they have been at every meeting and have submitted their name and address. Stevenson stated that they are still waiting for notification of the project. Burke will ask the Assessor's Office to update their abutters list to include Mr. and Mrs. Stevenson. Khumalo stated that abutters are notified by mail of the first public hearing only and that no other notifications are given except as announced by the Zoning Board of the continuation of the public hearings.

Kevin Cloutier, 11 April Lane, felt that building the septic system under Westford regulations for 12 units on less than an acre of land will be a potential problem in the future and the builders will be gone leaving the problem for the town and the neighbors. Cloutier was concerned with the waivers being requested and felt that the developers should have to obey the town codes.

Deschenes asked the Board to address the issue of peer review. Khumalo stated that there is enough information to get the peer review started. Khumalo asked if the Board wished to use the same consultants as with the Rosegate project or go through the RFP process. Deschenes stated that he was comfortable using the same consultants. Deschenes suggested holding off on the architectural design until the applicant meets with staff regarding design alternatives. It was moved by Johnson, seconded by Herrmann, and VOTED UNANIMOUSLY, to use the same consultants for peer review.

### **MOTION TO CONTINUE THE PUBLIC HEARING**

It was moved by Johnson, seconded by Kazeniak, and VOTED UNANIMOUSLY, to continue the public hearing to June 25, 2003.

### **ADJOURNMENT**

It was moved by Johnson, seconded by Herrmann, and VOTED UNANIMOUSLY, to adjourn the meeting.

Submitted by Beth Kinney, Recording Secretary